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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 627

F. J. UTLEY AND D. T. UTLEY, APPELLANTS,

vs.

CITY OF ST. PETERSBURG, A MUNICIPAL CORPORATION.

STATEMENT AS TO JURISDICTION ON APPEAL.

MAY IT PLEASE THE COURT:

The appellants, in support of the jurisdiction of this Court to review the above-entitled cause on appeal, respectfully represent:

A.

Statutory Provisions Sustaining Jurisdiction.

Judicial Code, Section 237, amended (U. S. C. A., Title 28, Section 344), provides, in part, as follows:

> "(*a*) A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had * * * or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or

laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ.

"(*b*) It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had where is drawn in question * * * the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, etc.

"(*c*) If a writ of error be improvidently sought and allowed under this section in a case where the proper mode of invoking a review is by a petition for certiorari, this alone shall not be a ground for dismissal; but the papers whereon the writ of error was allowed shall be regarded and acted on as a petition for certiorari and as if duly presented to the Supreme Court at the time they were presented to the court or judge by whom the writ of error was allowed."

Chapter 14, Section 1, 45 Stat. 54 (U. S. C. A., Title 28, Section 861*a*), reads as follows:

"The writ of error in cases, civil and criminal is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal."

Chapter 14, Section 2, 45 Stat. 54, as amended April 26, 1928, Chapter 440, 45 Stat. 466 (U. S. C. A., Title 28, Section 861*b*), reads as follows:

> "The statutes regulating the right to a writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and of invoking such relief, including the provisions relating to costs, supersedeas, and mandate, shall be applicable to the appeal which the preceding section substitutes for a writ of error."

B.

Date of Decree and Date of Application for Appeal.

The decree sought to be reviewed was entered on the 20th day of September, 1933 (R. 112).

Petition for rehearing was duly filed and denied by order of the Supreme Court of Florida on October 12, 1933 (R. 125).

The application for appeal was presented on the 2d day of November, 1933 (R. 126).

C.

The Florida Statute the Validity or Constitutionality of Which is Involved.

The object and purpose of the suit is to test the constitutionality of Chapter 9914, Special Acts of the Legislature of Florida of the year 1923, and is found in volume 2 of the Acts of the Legislature of Florida of 1923, and is set out at pages 2679 to 2690, inclusive. A copy of said law, duly certified by the Secretary of State of the State of Florida under the great seal of said State, is set out in the record at pages 55 to 71 thereof and is attached to the bill as Exhibit "X".

A brief summary of the provisions of said Chapter 9914, Special Acts of the Legislature of Florida of 1923, is as follows:

Section 1 provides that the city is to estimate and determine the cost of improvements to be raised by special assessments and may, by resolution, issue improvement bonds as the general obligation of the municipality in an amount not exceeding 70 per cent of such estimate. Further provides for levy of an *ad valorem* tax on all property in the city for debt service on defaulted bonds.

Section 2 of said Act provides that such bonds shall be excluded from any limitation of indebtedness prescribed by the charter of the city, or otherwise, and for *ad valorem* tax to pay principal and interest on defaulted bonds.

Section 5 of said Act provides that said bonds shall be negotiable and shall not be invalid for any irregularity or defect in the proceedings and shall be incontestable in the hands of *bona fide* purchasers or holders for value.

Section 6 provides, among other things, that before issuing bonds the governing authority shall investigate and determine the legality of the proceedings and further provides that neither the municipality nor any taxpayer thereof shall be permitted to question the validity or legality of the obligation in any court in any action or proceeding.

Section 7 provides that the issuance of bonds shall not be submitted to a vote of the electors of the city.

Section 8 provides that said Chapter 9914 shall be sufficient unto itself without reference to other statutes or laws.

Section 9 provides for the recordation of liens for special improvements and that no other record or notice shall be necessary to any person or corporation; further provides that no error, omission, or mistake in regard to the name of the owner shall invalidate the assessment; provides for governing authority to hear objections after completion of work.

Section 10 provides that the governing authority may direct the whole or such part of the cost and expense of the improvement as it shall fix be assessed against the property abutting on the improvement according to the frontage thereof.

Section 13 provides that the governing authority of the city shall hear and determine all objections and protests to the proposed assessments after the work has been completed, as otherwise provided in said statute, and further provides that upon confirmation the assessment shall constitute a lien on the respective parcels of land superior to all other liens except for State and county taxes.

Section 14 provides for recordation of the assessment in the office of the clerk of the circuit court.

Section 15 provides that for thirty days after the date of confirmation of any special assessment any person aggrieved shall have the right to contest the legality thereof by suit, action, writ, or special proceeding, after which time no suit, action, writ, or special proceeding, in any manner questioning the legality of said special assessment, shall lie for any cause whatsoever.

Section 16 of said Act provides that the assessment shall be due and payable within thirty days after confirmation.

Section 17 of said Act provides, again, for the levying and collection of *ad valorem* tax on all taxable property within the city to pay interest and principal on defaulted bonds.

Section 18 of said Act provides for interest at 1 per cent per month in case of default in payment and for compulsory acceleration of installments.

Section 19 provides for the manner of enforcing collection of assessments under said Act.

Section 20 provides in case of an invalid assessment that repeated reassessments shall be made until a valid assessment is obtained.

Section 21 of said Act provides that no omission, informality, or irregularity in the proceedings in or preliminary to the making of any special assessment shall affect the validity of the same, and makes the record thereof kept by the city clerk sufficient evidence that the assessment was duly levied, and that all other proceedings adequate to the adoption of said assessment-roll were duly had, taken, and performed; provides that no failure of the city clerk to record the assessment-roll or of the said clerk, or any other officer, to deliver the same to the director of finance, or to the clerk of the circuit court, or to do any other act or thing by him required shall in any way invalidate any assessment, and no variance from the directions herein contained, as to the form and manner of any of the proceedings, shall be held material.

Section 22 provides, again, for reassessment in case of the invalidity of the old assessment.

Section 23 provides for mandatory assessment and collection of *ad valorem* tax to pay defaulted bonds.

Section 24 defines "local improvements."

Section 25 provides that said statute shall be a supplemental, additional, and alternative method of procedure.

D.

Nature of Case and Ruling Below.

The object and purpose of the bill filed in the trial court was to test the validity of Chapter 9914, Special Acts of the Legislature of Florida of 1923, as applied to appellants in the assessment of a lien for paving a street in the said city adjacent to the property of appellants.

Briefly summarized the bill alleges that appellants' property was located some forty blocks from the main business center of the city, in a sparsely-settled section; that a

street fifty feet wide was paved in front of their property and the entire cost assessed against the abutting property on either side of the street, including that of appellants, without the existence or legislative determination of any public convenience or necessity therefor, and that the assessment complained of was levied against the abutting property of appellants without the existence or legislative determination of benefits by the front-foot rule, all pursuant to and under the express terms and conditions of said Chapter 9914, Special Acts of the Legislature of Florida of 1923, contrary to the rights of appellants under the due process and equal protection of the laws clauses of the Fourteenth Amendment to the Federal Constitution, and under the privileges and immunities clause of said amendment.

Also that improvement bonds covering the cost of said improvement were issued by the city and sold, and that certain of said bonds were delinquent, and that the city, under the mandatory provisions of said Chapter 9914, levied and assessed against the property of appellants an *ad valorem* tax to pay interest and principal on said defaulted bonds, and that the rights of appellants had been invaded, and that the levying of said assessement and the recordation thereof and the assessment of an *ad valorem* tax against their property amounted to a taking of property without due process of law and to a denial of the equal protection of the laws, because appellants, as taxpayers, were denied access to the courts at any stage of the proceedings; that said liens and assessment cast clouds on title of appellants to the real estate and resulted in irreparable injury, and the bill sought to enjoin the enforcement and collection of same because it amounted to a taking of the property of appellants without due process of law and to a denial of the equal protection of the laws, and to the passage and enforcement of a stat-

ute abridging the privileges and immunities of appellants as citizens of the United States under the Fourteenth Amendment to the Constitution of the United States.

One general and two special demurrers (R. 73) were interposed to the bill in the trial court, and all three demurrers sustained and the bill dismissed (R. 81).

Appeal was taken to the Supreme Court of Florida, which, by its *per curiam* opinion, held that said statute was attacked as being void because of the several provisions thereof being in conflict with the State and Federal Constitutions. (See opinion of court, R. 112.) The Supreme Court of Florida overruled the contention of appellants that said Chapter 9914 did not provide for due process of law under the Fourteenth Amendment to the Constitution of the United States, and also ruled adversely to the contention of appellants that the issuance of the certificate was a taking of property without due process of law. Also the court ruled adversely to the contention of appellants that the Act was unconstitutional and denies due process of law in the levying and collection of a general tax on all property for the payment of bonded indebtedness. While in the three instances mentioned the court does not expressly mention the Fourteenth Amendment to the Constitution of the United States, in the early part of the opinion the court says that the relief prayed was grounded upon the contention that Chapter 9914, Special Acts of the Legislature of Florida of 1923, under which the paving certificates were issued, was void because of the several provisions thereof being in conflict with certain provisions of the State and Federal Constitutions. This is, we submit, a ruling in three instances by the Supreme Court of Florida on the Federal question involved.

The curative acts referred to in the opinion have been judicially construed by the Supreme Court of Florida as curative acts and not legislative assessments in another

case. (See *Utley* v. *City of St. Petersburg*, 144 So. 54, at page 56.)

The question of estoppel referred to in the opinion of the Supreme Court of Florida is not supported by the record.

E.

Cases Believed to Sustain Jurisdiction.

The following decisions of this Court are believed to sustain jurisdiction of this appeal:

The Bell's Gap R. Co. v. *Pennsylvania*, 134 U. S. 232;
Miedreich v. *Lauenstein*, 232 U. S. 236;
Montana ex rel. Haire v. *Rice*, 204 U. S. 291;
Chicago, B. & Q. R. v. *Ill. ex rel. Grimwood*, 200 U. S. 561;
Broadwell v. *Carter County*, 253 U. S. 25;
Palmetto Fire Insurance Co. v. *Conn.*, 272 U. S. 295;
International Harvester v. *Missouri*, 234 U. S. 199;
Fiske v. *State of Kansas*, 274 U. S. 380;
Carpenter v. *Shaw*, 280 U. S. 363;
Nashville, C. & St. L. Ry. v. *White*, 278 U. S. 456;
Great Northern Ry. v. *State of Minnesota*, 278 U. S. 503.

We respectfully submit that this Court has jurisdiction of this appeal by virtue of Judicial Code, Section 237, amended (U. S. C. A., Title 28, Section 344); Chapter 14, Section 1, 45 Stat. 54 (U. S. C. A., Title 28, Section 861*a*), and Chapter 14, Section 2, 45 Stat. 54, as amended April 26, 1928, Chapter 440, 45 Stat. 466 (U. S. C. A., Title 28, Section 861*b*).

Respectfully submitted,

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